

Introduced by Senator Runner

February 18, 2016

An act to add Chapter 4 (commencing with Section 550) to Title 7 of Part 2 of the Code of Civil Procedure, and to add Chapter 3.7 (commencing with Section 11367) to Part 1 of Division 3 of Title 2 of the Government Code, relating to small business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1228, as introduced, Runner. Small business: California Small Business Regulatory Fairness Act.

Existing law generally requires that all administrative remedies are exhausted before a court may inquire into the validity of any final administrative order or decision and authorizes the court to inquire whether the agency proceeded without, or in excess of, the agency's jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of discretion, as specified.

This bill would authorize a court, after administrative remedies are exhausted, to grant equitable relief in the interest of justice to a small business, as defined, and requires the court to consider mitigating factors when granting the equitable relief including, but not limited to, that the small business engaged in subsequent action to correct the violation. The bill would, notwithstanding any other law, authorize a small business, before exhausting all administrative remedies, to seek judicial review and the stay of an order issued by a state agency if the small business would suffer irreparable harm in the absence of the court granting a stay of the state agency's order or the state agency issuing the order has not complied with a specified section of law. The bill would, if the court grants the stay of the order, deem the small business to have exhausted all administrative remedies and would require the

court to hear the case sitting without a jury. The bill would require the court to review the evidence and facts de novo and make its own independent judgment on the merits of the case. The bill would exempt any order from the Franchise Tax Board or the State Board of Equalization from these provisions.

Existing law, the Administrative Procedure Act, governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and requires, among other things, that a state agency make available to the public facts, evidence, documents, testimony, or other evidence on which the state agency relies on to support the agency's determination that the proposed action will not have a significant adverse impact on business. Existing law establishes the Office of Small Business Advocate, within the Governor's Office of Business and Economic Development, and establishes the duties and functions of the Director of the Office of Small Business Advocate including, among other duties, representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses. Existing law requires each state agency that significantly regulates small business or that significantly impacts small business to designate at least one person who is required to serve as a small business liaison.

This bill would require a state agency to assist a small business, as defined, in complying with all statutes and regulations administered by the state agency, in any enforcement action by the state agency, and in participating in the rulemaking process under the Administrative Procedure Act, as specified. The bill would require a state agency to include certain information on any notice of regulatory violation, penalty assessment, or other punitive action sent to a small business, including, among others, the contact information for the agency's small business liaison. The bill would, notwithstanding any other law, require a state agency, before assessing any administrative penalties or fines on a small business, to provide no less than 30 days actual notice to the small business and to provide the small business with an opportunity to comply with the law or remedy the violation if ignorance of the violation is reasonable under the circumstances and the violation does not constitute a crime or a basis for strict liability. The bill would, no later than December 31, 2017, require a state agency to create a policy, as specified, that provides for the reduction, and under certain circumstances waiver, of civil penalties for a small business based upon principles of equity and fairness, and requires a state agency to consider

mitigating factors when adopting the policy, including, but not limited to, that the violation by the small business was committed inadvertently or without knowledge of the requirements for compliance with the law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Small Business Regulatory Fairness Act.

3 SEC. 2. Chapter 4 (commencing with Section 550) is added
4 to Title 7 of Part 2 of the Code of Civil Procedure, to read:

5
6 CHAPTER 4. CALIFORNIA SMALL BUSINESS REGULATORY
7 FAIRNESS ACT
8

9 550. (a) A court may, after administrative remedies are
10 exhausted, grant equitable relief to a small business from a final
11 order of a state agency in the interest of justice.

12 (b) When granting equitable relief under this section, the court
13 shall consider mitigating factors including, but not limited to:

14 (1) The small business has not been subject to previous
15 enforcement actions by the state agency.

16 (2) The violation by the small business did not involve willful
17 or criminal conduct.

18 (3) The violation by the small business did not pose an imminent
19 health, safety, or environmental threat.

20 (4) The violation by the small business was committed
21 inadvertently or without knowledge of the requirements for
22 compliance with the law.

23 (5) The small business is unable to pay the penalty or the penalty
24 would impair the ability of the small business to conduct business
25 or compete effectively.

26 (6) The small business has a low degree of culpability when its
27 conduct is judged in light of its size, length of operation, and the
28 sophistication of its owners or managers.

29 (7) The small business cooperated during any investigation by
30 the state agency.

31 (8) The small business engaged in subsequent action to correct
32 the violation.

(c) The court may take into consideration any other mitigating factors the court finds relevant. The court shall not be required to weigh the mitigating factors equally.

(d) The court shall review all evidence and facts de novo and make its own independent decision on the merits when granting relief under this section.

551. (a) Notwithstanding any other law, a small business may seek judicial review and a stay of an order of a state agency without exhausting administrative remedies if either of the following apply:

(1) The small business would suffer irreparable harm in the absence of the court granting a stay on the order of the state agency.

(2) The state agency issuing the order that is before the court has not established the policy required by Section 11367.4 of the Government Code.

(b) If a court grants relief to a small business under this section, the small business shall be deemed to have exhausted all administrative remedies and the case shall be heard by the court sitting without a jury.

(c) The court shall review all evidence and facts de novo and make its own independent decision on the merits.

(d) The decision of the court to decline review or deny relief under this section shall not be appealable.

552. (a) For purposes of this chapter, “small business” has the same meaning as set forth in Section 14837 of the Government Code.

(b) For purposes of this chapter, “state agency” shall not include the Franchise Tax Board or the State Board of Equalization.

SEC. 3. Chapter 3.7 (commencing with Section 11367) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.7. CALIFORNIA SMALL BUSINESS REGULATORY
FAIRNESS ACT

11367. The following terms shall have the following meanings for purposes of this chapter:

(a) “Small Business” shall have the same meaning as set forth in Section 14837 of the Government Code.

(b) “State agency” means any state agency except the Franchise Tax Board or the State Board of Equalization.

11367.1. (a) A state agency shall do all of the following:

1 (1) Assist a small business in achieving compliance with statutes
2 and regulations administered by the state agency.

3 (2) Assist a small business during an enforcement action by
4 the state agency.

5 (3) Assist a small businesses with participating in the rulemaking
6 process required by the Administrative Procedure Act (Chapter
7 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
8 Title 2 of the Government Code). A state agency shall provide a
9 small business with information on how to participate in the
10 rulemaking process and shall provide the contact information of
11 any ombudsman or small business liaison that can assist the small
12 business, including, but not limited to, the Office of Small Business
13 Advocate.

14 (b) A state agency shall include all of the following information
15 on any notice of regulatory violation, penalty assessment, or other
16 punitive action sent to a small business:

17 (1) How the small business can comply with the law or remedy
18 the violation, pursuant to Section 11367.2.

19 (2) All administrative and judicial remedies available to the
20 small business.

21 (3) The Internet Web site, if available, and contact information
22 for all of the following:

23 (A) The Office of Small Business Advocate.

24 (B) Any applicable ombudsman that may assist the small
25 business.

26 (C) The small business liaison for the state agency.

27 11367.2. (a) Notwithstanding any other law, before imposing
28 any civil penalties or administrative fines on a small business, a
29 state agency shall provide no less than 30 days actual notice to a
30 small business and shall provide the small business with an
31 opportunity to comply with the law or remedy the violation of the
32 law if ignorance of the violation is reasonable under the
33 circumstances and the violation does not constitute a crime or a
34 basis for strict liability.

35 (b) All other notices of regulatory violation, which result in
36 penalty assessment or other punitive action, sent to a small business
37 shall be delivered as expeditiously as possible to allow the small
38 business to comply with the law and mitigate any losses.

1 (c) Notices required under this section shall be delivered to the
2 small business in person by an authorized agent of the state agency
3 or by certified mail.

4 11367.4. (a) No later than December 31, 2017, a state agency
5 shall establish a policy to provide for reduction, and under certain
6 circumstances waiver, of civil penalties for a small business based
7 upon principles of equity and fairness.

8 (b) Mitigating factors that shall be considered by a state agency
9 when adopting the policy in subdivision (a) include, but are not
10 limited to:

11 (1) The small business has not been subject to previous
12 enforcement actions by the agency.

13 (2) The violation by the small business did not involve willful
14 or criminal conduct.

15 (3) The violation by the small business did not pose an imminent
16 health, safety, or environmental threat.

17 (4) The violation by the small business was committed
18 inadvertently or without knowledge of the requirements for
19 compliance with the law.

20 (5) The small business is unable to pay the penalty or the penalty
21 would impair the ability of the small business to conduct business
22 or compete effectively.

23 (6) The small business has a low degree of culpability when its
24 conduct is judged in light of its size, length of operation, and the
25 sophistication of its owners or managers.

26 (7) The small business cooperated during any investigation by
27 the state agency.

28 (8) The small business engaged in subsequent action to correct
29 the violation.

30 (c) A small business shall not be required to meet all of the
31 mitigating factors adopted by a state agency to receive relief under
32 the policy. A state agency shall not require the mitigating factors
33 to be weighed equally when granting relief to a small business
34 under the policy.

35 (d) A court may independently weigh, de novo, all relevant
36 mitigating factors when reviewing a decision by a state agency to
37 grant relief to a small business under the policy.